

Application No. 09/172,853
Attorney Docket No. 5725.0134-01

REMARKS

I. Interview Summary

Applicant wishes to thank Examiner Webman for the courtesies extended to Applicant's undersigned representative during the telephone interview of July 30, 2001. During the interview, the Examiner graciously agreed to withdraw the finality of the Office Action dated January 8, 2001, based on the reasons set forth below, and discussed previously in Applicant's Response filed June 5, 2001.

II. Request to Withdraw Finality of the Office Action

Applicant requests that the Office withdraw the finality of the last Office Action, dated January 8, 2001. According to M.P.E.P. § 706.07(a), a second, or subsequent action on the merits shall be final, except where the Office introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims nor based on information submitted in an IDS after first action on the merits. In this case, the Office has purported to maintain the prior rejection set forth in the Office Action mailed May 10, 2000, in response to which no claims were amended by Applicant. However, the Final Office Action included several grounds of objection and/or rejection not included in the May 10, 2000, Office Action. Specifically, the Office has raised new issues of new matter, lack of written description, and vagueness. See Final Office Action, pages 3-4. Applicant notes that the Office has not specifically recited the claims being rejected, but has made statements that amount to the same thing. Nevertheless,

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issues of new matter, lack of written description, and vagueness are grounds for rejection to which Applicant must respond. Furthermore, the Office is obligated to clearly state all outstanding grounds of rejection and withdraw the "observations" so that these matters can be appropriately addressed by way of petition or appeal, should either course of action be necessary. For these reasons, Applicant requests that the finality of the Office Action mailed January 8, 2001, be withdrawn and that a non-final Office Action be issued which clearly sets forth all outstanding grounds for rejection.

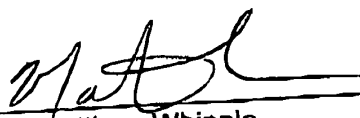
III. Conclusion

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Supplemental Response, such extension is hereby requested. If there are any fees due under 37 C.F.R. § 1.16 or 1.17 which are not enclosed, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge those fees to our Deposit Account No. 06-916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 31, 2001

By: 
Matthew Whipple
Reg. No. 47,217

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